IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

RSRTC VS MANGAT RAM & ORS. .

S.B. CIVIL WRIT PETITION NO.3185/2002 UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 7th July, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Anil Bachhawat,for the petitioner.
Mr.KS Yadav, for the respondents.

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BY THE COURT: -

The petitioner RSRTC has in the instant writ petition challenged the order dated 27.6.2001 (Annex.3) of the Industrial Tribunal-cum-Labour Court, Bikaner (hereinafter referred as 'learned labour court'). By the impugned order, the learned tribunal allowed the application under Section 33 C(2) of the Industrial Tribunal Act, 1947 (hereinafter referred as 'the Act of 1947) filed by the contesting respondent no.1.

The facts in brief giving rise to this petition are that the

contesting respondent no.1 was removed from service by the petitioner on 31.12.1984. Aggrieved by the order, he raised an industrial dispute and a reference thereabout was made to the learned labour court, Bikaner. The learned labour court passed an award on 5th April, 1989 declaring removal/retrenchment of the respondent no.1 from the service as illegal. Pursuant to the award, the respondent no.1 was taken in service of the petitioner on 15.7.1989 and was posted at Anoopgarh Depot.

The contesting respondent no.1 thereafter, filed an application under Section 33 C(2) of the Act of 1947 before the learned Labour Court, Bikaner, which was registered as labour claim case no.24/92 with the prayer that he should be paid a sum of Rs.1,35,523/- towards arrears of his salary and bonus etc. for the period from 31.12.1984 to 31.12.1991 and interest thereon. In reply to the application filed by the petitioner before the learned labour court, it was stated that petitioner was already under suspension on account of pendency of some other disciplinary proceedings at the time of his removal on 31.12.1984. When the petitioner was reinstated pursuant to the award passed by the learned labour court, the said disciplinary proceedings stood revived and, therefore, on the date of reinstatement, the petitioner would be treated as a suspended employee. It was, therefore, submitted that although other dues of the respondent no.1 have been paid, but the respondent no.1

shall be entitled to receive only subsistence allowance till the conclusion of disciplinary proceedings against him. Learned labour court, Bikaner vide its order dated 20.3.1995 (Annex.1) while disposing of the application of the respondent no.1 allowed payment for a sum of Rs.23,217.29/-, which was held to be outstanding towards subsistence allowance for the period from 31.12.1984 to 14.7.1989 and arrears of salary for the period from 15.7.1989 to August, 1989. But it further held that difference of salary and the subsistence allowance till the disciplinary proceedings were concluded shall abide by the final conclusion of such proceedings.

The respondent no.1 filed another application under Section 33 C(2) of the Act of 1947 before the learned tribunal on 10.6.1997. In this application, it was stated that the disciplinary proceedings pending against him has since been concluded with the passing of the final order dated 29.2.1996 (Annex.2) in which the disciplinary authority has only imposed the penalty of find of Rs.300/-. He prayed that for the period in question, he was entitled to a sum of Rs.1,07,523.36/- towards arrears of salary and bonus etc, but he was paid only a sum of Rs.23,217.29/-. Therefore, the petitioner-corporation be directed to pay the balance amount of Rs.84,306.07/- with interest and cost of the litigation. Learned labour court by its order dated 27.6.2001 (Annex.3) considered the order of penalty dated

29.6.1996. According to this order, only fine of a sum of Rs.300/- was imposed upon the respondent. No order, however, was passed for withholding remaining salary of the respondent no.1 for the period of his suspension. The learned labour court, therefore, allowed the payment of Rs.84,306/- and interest thereon in the sum of Rs.14,520/-, total of which came to Rs.98,826/-.

Learned counsel for the petitioner Sh. Anil Bachhawat has assailed this order on various grounds, but primarily, preliminary on the ground that when the respondent no.1 was actually under suspension during the disciplinary proceedings pending against him, the learned labour court has committed an error of law in awarding the difference of the amount of salary and the subsistence allowance for the said period together with interest. He argued that merely because this amount has not been specifically withheld in the order of penalty dated 29.2.1996, no presumption would arise that respondent no.1 has been held entitled to receive the said amount.

On the other hand, learned counsel for the respondent Sh. K.S. Yadav argued that if an employee is placed under suspension during disciplinary proceedings, disciplinary authority is required to pass a specific order at the conclusion of such proceedings as to whether the difference of the amount of salary and subsistence allowance payable to such employee shall

be withheld or not. In the present case, even though the disciplinary authority has awarded the penalty of fine of Rs.300/- on the respondent no.1,yet it has not specifically passed an order withholding the disputed amount.

I have given thoughtful consideration to the arguments advanced by learned counsel for both the parties and perused the record.

A careful reading of order of penalty dated 29.2.1996, which has been placed in these proceedings as Annex.2, indicate that the said order was passed on the basis of admission of his guilt by the delinquent (respondent no.1). On that basis, the penalty of fine of Rs.300/- was awarded to him by the disciplinary authority. This order is fairly reasoned and speaking on. If the disciplinary authority in its wisdom did not decide to withhold the difference of the aforesaid two amounts, the amount which is legitimately due to the paid to the respondent no.1 cannot be withheld merely on the basis of inference. In the matter of disciplinary proceedings, an order of penalty or for that matter, order withholding part of the salary during the period of suspension cannot be a matter of inference. I do not find any legal error or infirmity in the order passed by authorities below.

Hence, the writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-